
TITLE 750 DEPARTMENT OF FINANCIAL INSTITUTIONS

Emergency Rule
LSA Document #10-102(E)

DIGEST

Amends [750 IAC 9-1-1](#) concerning the term "mortgage transaction". Amends [750 IAC 9-2-2](#) concerning the date of applicable federal law. Amends [750 IAC 9-2-4](#) relating to the applicability of article to "dwellings". Amends [750 IAC 9-2-5](#) relating to the exclusion for registered mortgage loan originators. Amends [750 IAC 9-3-1](#) concerning the licensing of loan processors and underwriters who are independent contractors. Amends [750 IAC 9-3-2](#) relating to fees for licensing of mortgage loan originators. Amends [750 IAC 9-3-5](#) concerning preclicensing education requirements. Effective February 11, 2010.

[750 IAC 9-1-1](#); [750 IAC 9-2-2](#); [750 IAC 9-2-4](#); [750 IAC 9-2-5](#); [750 IAC 9-3-1](#); [750 IAC 9-3-2](#); [750 IAC 9-3-5](#)

SECTION 1. [750 IAC 9-1-1](#) IS AMENDED TO READ AS FOLLOWS:

[750 IAC 9-1-1](#) Definitions

Authority: [IC 24-4.4-1-101](#)

Affected: [IC 24-4.4-1-301](#); [IC 24-4.5-1-301](#)

Sec. 1. The definitions in this rule apply throughout this article:

(1) "Affiliate", with respect to any person subject to this article, means a person that, directly or indirectly, through one (1) or more intermediaries:

- (A) controls;
- (B) is controlled by; or
- (C) is under common control with;

the person subject to this article.

(2) "Agreement" means the bargain of the parties in fact as found in the parties' language or by implication from other circumstances, including course of dealing or usage of trade or course of performance.

(3) "Agricultural products" includes:

- (A) agricultural;
- (B) horticultural;
- (C) viticultural;
- (D) dairy products;
- (E) livestock;
- (F) wildlife;
- (G) poultry;
- (H) bees;
- (I) forest products;
- (J) fish and shellfish;
- (K) any products raised or produced on farms; and
- (L) any products processed or manufactured from products raised or produced on farms.

(4) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures the agricultural products.

(5) "Civil court" means any court in Indiana having jurisdiction over civil cases.

(6) "Consumer credit sale" is a sale of goods, services, or an interest in land in which:

- (A) credit is granted by a person who engages as a seller in credit transactions of the same kind;
- (B) the buyer is a person other than an organization;
- (C) the goods, services, or interest in land are purchased primarily for a personal, family, or household purpose;
- (D) either the debt is payable in installments or a credit service charge is made; and
- (E) with respect to a sale of goods or services, either the amount financed does not exceed fifty thousand dollars (\$50,000) or the debt is secured by personal property used or expected to be used as the principal dwelling of the buyer.

(7) "Credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(8) "Creditor" has the meaning set forth in:

- (A) [IC 24-4.4-1-301](#), which is incorporated by reference, for first lien mortgage transactions; and
- (B) [IC 24-4.5-1-301](#), which is incorporated by reference, for mortgage transactions not secured by a first lien.

(9) "Department" refers to the department of financial institutions.

(10) "Depository institution" has the meaning set forth in the Federal Deposit Insurance Act (12 U.S.C. 1813(c)), which is incorporated by reference, and includes any credit union.

(11) "Director" refers to the director of the department of financial institutions or the director's designee.

(12) "Dwelling" means a residential structure that contains one (1) to four (4) units, regardless of whether the structure is attached to real property. The term includes an individual:

- (A) condominium unit;
- (B) cooperative unit;
- (C) mobile home; or
- (D) trailer;

that is used as a residence.

(13) "Employee" means an individual who is paid wages or other compensation by an employer required under federal income tax law to file Form W-2 on behalf of such employee.

(14) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(15) "Immediate family member" means:

- (A) spouse;
- (B) child;
- (C) sibling;
- (D) parent;
- (E) grandparent;
- (F) grandchild;
- (G) stepparents;
- (H) stepchildren;
- (I) stepsiblings; and
- (J) adoptive relationships.

(16) "Individual" means a natural person.

(17) "Licensee" means a person licensed as a mortgage loan originator under this article.

(18) "Loan" includes:

- (A) the creation of debt by:
 - (i) the creditor's payment of or agreement to pay money to the debtor or to a third party for the account of the debtor; or
 - (ii) the extension of credit by a person who engages as a seller in credit transactions primarily secured by an interest in land;
- (B) the creation of debt by a credit to an account with the creditor upon which the debtor is entitled to draw immediately; and
- (C) the forbearance of debt arising from a loan.

(19) "Loan brokerage business" means activities by which any person, in return for any consideration from any source, procures, attempts to procure, or assists in procuring a mortgage transaction from a third party or any other person, whether or not the person seeking the loan actually obtains the loan.

(20) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of, and subject to the supervision and instruction of, a person licensed or exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#). For purposes of this section, the term "clerical or support duties" may include, after the receipt of an application, the following:

- (A) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a mortgage transaction.
- (B) The communication with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that the communication does not include:
 - (i) offering or negotiating loan rates or terms; or
 - (ii) counseling consumers about mortgage transaction rates or terms.

An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that the individual can or will perform any of the activities of a mortgage loan originator.

(21) "Mortgage loan originator" means an individual who for compensation or gain, or in the expectation of compensation or gain, engages in taking a mortgage transaction application or offering or negotiating terms of

a mortgage transaction that is made either under [IC 24-4.4](#) or [IC 24-4.5](#) or by an employee of a person licensed or exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#) while engaging in the loan brokerage business. The term does not include the following:

- (A) An individual engaged solely as a loan processor or underwriter as long as the individual works exclusively as an employee of a person licensed or exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#).
 - (B) Unless the person or entity is compensated by:
 - (i) a creditor;
 - (ii) a loan broker;
 - (iii) another mortgage loan originator; or
 - (iv) any agent of the creditor, loan broker, or other mortgage loan originator described in items (i) through (iii);a person that performs only real estate brokerage activities and is licensed or registered in accordance with applicable state law.
 - (C) A person solely involved in extensions of credit relating to timeshare plans (as defined in 11 U.S.C. 101(53D), which is incorporated by reference).
- (22) "Mortgage transaction" means a loan or consumer credit sale that is or will be used by the debtor primarily for personal, family, or household purposes and is secured by a mortgage, land contract, or other equivalent consensual security interest on a dwelling or residential real estate **upon which is constructed or intended to be constructed a dwelling**.
- (23) "Nationwide Mortgage Licensing System and Registry" or "NMLSR" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of creditors and mortgage loan originators.
- (24) "Nontraditional mortgage product" means any mortgage product other than a thirty (30) year fixed rate mortgage.
- (25) "Organization" means a corporation, a government or government subdivision, an agency, a trust, an estate, a partnership, a limited liability company, a cooperative, an association, a joint venture, an unincorporated organization, or any other entity, however organized.
- (26) "Payable in installments", with respect to a debt or an obligation, means that payment is required or permitted by written agreement to be made in more than four (4) installments not including a down payment.
- (27) "Person" includes an individual or an organization.
- (28) "Principal" of a mortgage transaction means the total of:
- (A) the net amount paid to, receivable by, or paid or payable for the account of the debtor; and
 - (B) to the extent that payment is deferred, amounts actually paid or to be paid by the creditor for registration, certificate of title, or license fees if not included in clause (A).
- (29) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including the following:
- (A) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property.
 - (B) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property.
 - (C) Negotiating, on behalf of any party, any part of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to the sale, purchase, lease, rental, or exchange of real property).
 - (D) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law.
 - (E) Offering to engage in any activity, or act in any capacity, described in this section.
- (30) "Registered mortgage loan originator" means any individual who:
- (A) meets the definition of mortgage loan originator and is an employee of:
 - (i) a depository institution;
 - (ii) a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or
 - (iii) an institution regulated by the Farm Credit Administration; and
 - (B) is registered with, and maintains a unique identifier through, the NMLSR.
- (31) "Residential real estate" means any real property, located in Indiana, upon which is constructed or intended to be constructed a dwelling.
- (32) "Revolving mortgage transaction" means an arrangement between a creditor and a debtor in which:
- (A) the creditor permits the debtor to obtain advances from time to time;
 - (B) the unpaid balances of principal, finance charges, and other appropriate charges are debited to an account; and
 - (C) the debtor has the privilege of paying the balances in installments.
- (33) "Unique identifier" means a number or other identifier assigned by protocols established by the NMLSR.

(Department of Financial Institutions; [750 IAC 9-1-1](#); emergency rule filed Jul 23, 2009, 4:14 p.m.):

SECTION 2. [750 IAC 9-2-2](#) IS AMENDED TO READ AS FOLLOWS:

[750 IAC 9-2-2](#) Construction

Authority: [IC 24-4.4-1-101](#)

Affected: [IC 24-4.4](#); [IC 24-4.5](#)

Sec. 2. (a) This article shall be liberally construed and applied to promote its underlying purposes and policies.

(b) The underlying purposes and policies of this article are:

- (1) to permit and encourage the development of fair and economically sound mortgage lending practices; and
- (2) to conform the regulation of mortgage lending practices to applicable state and federal laws, rules, and regulations.

(c) A reference to a requirement imposed by this article includes references to a related law or rule, or to any policy or guidance document of the department adopted under this article.

(d) To carry out the purposes of this article, the director has the broad administrative authority to administer, interpret, and enforce this article.

(e) A reference to a federal law in this article is a reference to the law in effect December 31, 2008: **2009**.

(Department of Financial Institutions; [750 IAC 9-2-2](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Feb 11, 2010, 2:49 p.m.: [20100217-IR-750100102ERA](#))

SECTION 3. [750 IAC 9-2-4](#) IS AMENDED TO READ AS FOLLOWS:

[750 IAC 9-2-4](#) Application

Authority: [IC 24-4.4-1-101](#)

Affected: [IC 24-4.4](#); [IC 24-4.5](#)

Sec. 4. (a) Except as provided in subsection (b), this article applies to a mortgage transaction:

- (1) that is secured by ~~an interest in land~~ **a dwelling** in Indiana; and
- (2) the closing for which takes place after June 30, 2010.

(b) This article does not apply to a mortgage transaction if:

- (1) the debtor is not a resident of Indiana at the time the transaction is entered into; and
- (2) the laws and regulations of the debtor's state of residence require that the transaction be made under the laws and regulations of the state of the debtor's residence.

(Department of Financial Institutions; [750 IAC 9-2-4](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Feb 11, 2010, 2:49 p.m.: [20100217-IR-750100102ERA](#))

SECTION 4. [750 IAC 9-2-5](#) IS AMENDED TO READ AS FOLLOWS:

[750 IAC 9-2-5](#) Exclusions

Authority: [IC 24-4.4-1-101](#)

Affected: [IC 24-4.4](#); [IC 24-4.5](#)

Sec. 5. This article does not apply to the following:

- (1) Extensions of credit to government or governmental agencies or instrumentalities.

- (2) A mortgage transaction in which the debt is incurred primarily for a purpose other than a personal, family, or household purpose.
- (3) An extension of credit primarily for a business, a commercial, or an agricultural purpose.
- (4) An extension of credit originated by:
 - (A) a depository institution;
 - (B) subsidiaries that are:
 - (i) owned and controlled by a depository institution; and
 - (ii) regulated by a federal banking agency; or
 - (C) an institution regulated by the Farm Credit Administration.
- (5) A mortgage transaction originated by a registered mortgage loan originator **or an individual who is eligible to be a registered mortgage loan originator**, when acting for an entity described in subdivision (4). However, a privately insured state chartered credit union must comply with the system of mortgage loan originator registration developed by the Federal Financial Institutions Examinations Council under Section 1507 of the Safe and Fair Enforcement for Mortgage Licensing Act of 2008 (SAFE), which is incorporated by reference.
- (6) An individual who offers or negotiates terms of a mortgage transaction with or on behalf of an immediate family member of the individual.
- (7) An individual who offers or negotiates terms of a mortgage transaction secured by a dwelling that served as the individual's residence.
- (8) Unless the attorney is compensated by:
 - (A) a lender;
 - (B) a mortgage broker;
 - (C) another mortgage loan originator; or
 - (D) any agent of the lender, mortgage broker, or other mortgage loan originator described in clauses (A) through (C);a licensed attorney who negotiates the terms of a mortgage transaction on behalf of a client as an ancillary matter to the attorney's representation of the client.
- (9) Agencies, instrumentalities, and government owned corporations of the United States, including United States government sponsored enterprises.

(Department of Financial Institutions; [750 IAC 9-2-5](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Feb 11, 2010, 2:49 p.m.: [20100217-IR-750100102ERA](#))

SECTION 5. [750 IAC 9-3-1](#) IS AMENDED TO READ AS FOLLOWS:

[750 IAC 9-3-1](#) Licensing of mortgage loan originators

Authority: [IC 24-4.4-1-101](#)

Affected: [IC 24-4.4](#); [IC 24-4.5](#)

Sec. 1. (a) Except as provided in [750 IAC 9-2-5](#)(5) and subsection (b), after June 30, 2010, an individual may not engage in the business of a mortgage loan originator without obtaining a mortgage loan originator license issued by the department under this article and annually maintaining the license.

(b) Notwithstanding the licensing requirements under this section, an individual acting exclusively as a servicer engaging in loss mitigation efforts with respect to an existing mortgage transaction is not required to meet the education, testing, background, and licensing standards of this article until July 1, 2011, to the extent that this extension of time is not denied by any guideline, rule, regulation, or interpretive letter issued by the United States Department of Housing and Urban Development.

(c) Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the NMLSR. Notwithstanding subsection (g), each licensed mortgage loan originator must be employed by either a licensed creditor or an entity exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#), that is registered with the NMLSR, in order to originate loans.

(d) Applicants for a license must apply for a license under this article in a form prescribed by the director. Each form:

- (1) must contain content as set forth by rule, instruction, or procedure of the director; and

(2) may be changed or updated as necessary by the director in order to carry out the purposes of this article.

(e) To fulfill the purposes of this article, the director may establish relationships or contracts with the NMLSR or other entities designated by the NMLSR to:

- (1) collect and maintain records; and
- (2) process transaction fees or other fees related to licensees or other persons subject to this article.

(f) For the purpose of participating in the NMLSR, the director may:

- (1) waive or modify, in whole or in part, by order, policy, or guidance, any or all of the requirements of this article; and
- (2) establish new requirements as reasonably necessary to participate in the NMLSR.

(g) A loan processor or underwriter who is not an employee of a person licensed or exempt from licensing under [IC 24-4.4](#) or [IC 24-4.5](#) may not engage in the **residential mortgage loan originator** activities of ~~as~~ a loan processor or underwriter unless such person obtains and maintains both a license under this section and a valid unique identifier issued by the NMLSR.

(Department of Financial Institutions; [750 IAC 9-3-1](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Nov 16, 2009, 2:13 p.m.: [20091125-IR-750090917ERA](#); emergency rule filed Feb 11, 2010, 2:49 p.m.: [20100217-IR-750100102ERA](#))

SECTION 6. [750 IAC 9-3-2](#) IS AMENDED TO READ AS FOLLOWS:

[750 IAC 9-3-2](#) Licensing qualifications

Authority: [IC 24-4.4-1-101](#)

Affected: [IC 4-21.5](#); [IC 10-13-3-12](#); [IC 24-4.4](#); [IC 24-4.5](#); [IC 28-11-3-5](#)

Sec. 2. (a) The department shall receive and act on all applications for licenses to engage as mortgage loan originators in mortgage transactions. Applications must be made as prescribed by the director.

(b) A license may not be issued unless the department finds that the professional training and experience, financial responsibility, character, and fitness of the applicant is such as to warrant belief that the mortgage loan originator will operate honestly and fairly within the purposes of this article.

(c) The director is entitled to request evidence of compliance with this section at:

- (1) the time of application;
- (2) the time of renewal of a license; or
- (3) any other time considered necessary by the director.

(d) Evidence of compliance with this section must include:

- (1) criminal background checks, as described in section 3 of this rule, including a national criminal history background check (as defined in [IC 10-13-3-12](#), which is incorporated by reference) by the Federal Bureau of Investigation, for the applicant;
- (2) credit histories as described in section 4 of this rule;
- (3) prelicensing education requirements as described in section 5 of this rule;
- (4) prelicensing written test requirements as described in section 6 of this rule;
- (5) surety bond requirements as described in section 7 of this rule;
- (6) a review of licensure actions in this and other states; and
- (7) other background checks considered necessary by the director.

(e) An individual who has had a mortgage loan originator license revoked in any state may not be licensed as a mortgage loan originator under this article, except that a subsequent formal vacation of such revocation shall not be deemed a revocation. The individual must submit personal history and experience information in a form prescribed by the NMLSR, including the submission of authorization for the NMLSR and the director to obtain information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(f) For purposes of this section and in order to reduce the points of contact that the director may have to maintain for purposes of this section, the director may use the NMLSR as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(g) Upon written request, an applicant is entitled to a hearing on the question of the qualifications of the applicant for a license in the manner provided in [IC 4-21.5](#).

(h) The applicant shall pay the following fees at the time designated by the department:

(1) An initial license fee as established by the **director, to be effective until June 30, 2010. Thereafter, the fee will be established by the** department under [IC 28-11-3-5](#), which is incorporated by reference.

(2) An annual renewal fee as established by the department under [IC 28-11-3-5](#), which is incorporated by reference.

(3) Examination fees as established by the department under [IC 28-11-3-5](#), which is incorporated by reference.

(i) A fee as established by the department under [IC 28-11-3-5](#), which is incorporated by reference, may be charged for each day a fee under subsection (h)(2) or (h)(3) is delinquent.

(j) A license issued under this section is not assignable or transferable.

(Department of Financial Institutions; [750 IAC 9-3-2](#); emergency rule filed Jul 23, 2009, 4:14 p.m.: [20090729-IR-750090577ERA](#); emergency rule filed Feb 11, 2010, 2:49 p.m.: [20100217-IR-750100102ERA](#))

SECTION 7. [750 IAC 9-3-5](#) IS AMENDED TO READ AS FOLLOWS:

[750 IAC 9-3-5](#) Prelicensing education requirements

Authority: [IC 24-4.4-1-101](#)

Affected: [IC 24-4.4](#); [IC 24-4.5](#)

Sec. 5. (a) To meet the prelicensing education requirements referred to in section 2(d)(3) of this rule, a person shall complete at least twenty (20) hours of education approved in accordance with subsection (b), which must include at least the following:

(1) Three (3) hours of federal law and regulations.

(2) Three (3) hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues.

(3) Two (2) hours of training related to lending standards for the nontraditional mortgage product marketplace.

(4) Two (2) hours of state law and rules concerning residential mortgage lending.

(b) For purposes of subsection (a), prelicensing education courses shall be reviewed and approved by the NMLSR based upon reasonable standards. Review and approval of a prelicensing education course must include review and approval of the course provider.

(c) The NMLSR may approve a prelicensing education course that is provided by an employer of the applicant or an entity that is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of the employer or entity.

(d) Prelicensing education may be offered in a classroom, online, or by any other means approved by the NMLSR.

(e) The prelicensing education requirements approved by the NMLSR in subsection (a) for any state shall be accepted as completion of prelicensing education requirements in this state.

(f) A person formerly licensed under this article, applying to be licensed again, shall prove that the person has completed all the continuing education requirements for the year in which the license was last held.

(Department of Financial Institutions; [750 IAC 9-3-5](#); emergency rule filed Jul 23, 2009, 4:14 p.m.:
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